

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS
CRIMINAL DIVISION

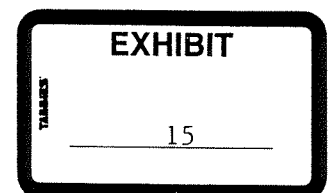
FILED
Aug 19 11 50 AM '99
JAMES OISSELT
CLERK OF COURTS
HAMILTON COUNTY, OHIO

STATE OF OHIO	:	NO. B-9706964
Plaintiff-Respondent	:	(Judge Niehaus)
vs.	:	<u>MEMORANDUM IN OPPOSITION</u>
REGINALD ALLEN	:	<u>TO PETITION FOR POST</u>
	:	<u>CONVICTION RELIEF</u>
Defendant-Petitioner	:	

Allen's petition stems from his convictions for Aggravated burglary (R.C. §2911.11(A)(1))(Ct. 1), Attempted Aggravated Murder (R.C. §2923.02(A)) (Ct. 2), Felonious Assault (R.C. §2903.11(A)(1))(Ct. 3), Felonious Assault (R.C. §2903.11(A)(2))(Ct. 4), and Domestic Violence (R.C. §2919.25(A))(Ct. 5).

Reginald Allen (hereinafter referred to as Defendant) was arrested and charged with the above offenses on September 19, 1997. The Grand Jury returned a five count indictment encompassing the above charges on September 26, 1997. A jury was impaneled and the trial began on November 19, 1998. On November 21, 1997, the jury returned a guilty verdict on all charges, and the defendant was sentenced on December 9, 1997, by this Court, to the DOC for ten (10) years on both count one (1) and count two (2) to run consecutively (credit 98 days); counts three, four, and five, were merged with count two as allied offenses.

Allen presently has an appeal pending under C-990046.



In his petition, defendant claims he was prejudiced by ineffective assistance of trial counsel by counsel's failure to:

- (1) present exculpatory evidence, and
- (2) object to "bad acts" evidence.

LAW

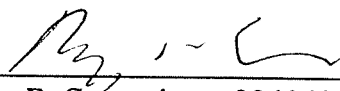
Allen's petition is untimely pursuant to R.C. 2953.21(A)(2) and properly overruled for this reason alone.

Defendant's petition is properly overruled as defendant could have raised those claims on appeal. These claims are thus barred by res judicata. State vs. Perry, 10 Ohio St.2d 175, 226 N.E.2d 104 (1967). Moreover, the claims are unsupported by any evidentiary documents and resultantly must fail. State ve Kapper, 5 Ohio St.3rd 36, 448 N.E.2d 823 (1983).

Defendant's petition to vacate and request for an evidentiary hearing is properly denied.

Respectfully,

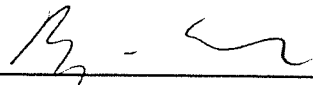
MICHAEL K. ALLEN (0025214P)
PROSECUTING ATTORNEY



Philip R. Cummings, 0041497P
Assistant Prosecuting Attorney
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Cincinnati, Ohio 45202
513/946-3012

CERTIFICATE OF SERVICE

I hereby certify that on this 19 day of August, 1999, I have posted a copy of the above entitled Memorandum for the Defendant-Petitioner by posting same in the United States mail addressed to Reginald Allen, Pro se, (# 352-308), Ross Correctional Inst., 16149 St. Route 104, P.O. Box 7010, Chillicothe, Ohio 45601.



Philip R. Cummings, 0041497P
Assistant Prosecuting Attorney